

<b>TO:</b>	<b>CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON APRIL 23, 2013</b>
<b>FROM:</b>	<b>CATHY SAUNDERS, CITY CLERK AND JENNIFER A. SMOUT, SOLICITOR</b>
<b>SUBJECT</b>	<b>CODE OF CONDUCT OF MUNICIPAL COUNCIL AND LOBBYIST REGISTRY UPDATE</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the City Clerk, with the concurrence of the Solicitor, the following actions be taken with respect to proposed amendments to the Council Policy 5(30) – Code of Conduct for Members of Municipal Council and the establishment of a Lobbyist Registry:

- a) that pursuant to section 13.7 of the Council Procedure By-law, the actions of the Municipal Council taken at its meeting of September 18, 2012, related to the adoption of clause 11 of the 24th Report of the Finance and Administrative Services Committee, concerning the Council Members Integrity Commissioner **BE RECONSIDERED**;
- b) the City Clerk, in consultation with the City Solicitor, **BE DIRECTED** to prepare a by-law to adopt the attached (Appendix “B”) Council Code of Conduct for introduction at a future meeting of Municipal Council;
- c) the City Clerk, in consultation with the City Solicitor, **BE DIRECTED** to prepare and report back to Municipal Council with Terms of Reference outlining the duties of an Integrity Commissioner that would include, but is not limited to, the following:
  - (i) appointment by Council by by-law under section 223.3 of the *Municipal Act, 2001*;
  - (ii) to function independently from the Civic Administration and report directly to Municipal Council;
  - (iii) to review the Code of Conduct for Members of Municipal Council and to make recommendations thereon as necessary;
  - (iv) to serve a multi-faceted role to act not only as a complaint investigation, but also as an advisor to individual Members of Council in relation to the Municipal Code of Conduct, and any procedures, rules and policies of the municipality governing the ethical behaviour as well as any associated policies, and act as a proactive educator for the Municipal Council, the Civic Administration and the Public;
  - (v) to provide semi-annual reports to the Municipal Council summarizing his/her activities in accordance with section 223.6 of the *Municipal Act, 2001*; and
  - (vi) to provide individual investigative reports as required, which will include a background concerning the complaint and recommendations to Municipal Council with respect to the complaint for its consideration, in accordance with section 223.6 of the *Municipal Act, 2001*; and
- d) the City Clerk, in consultation with the City Solicitor, **BE DIRECTED** to report back to Municipal Council with a process for the recruitment of an Integrity Commissioner that would include, but is not limited to the following provisions:

- (i) preparation of a Request for Proposal (RFP) that will require the submission of the following information: fees to be charged, under an independent contract and outline the following general qualifications;
  - A. proven impartiality and neutrality, such as that of a judge;
  - B. an ability to provide services on a part-time, flexible, and as-needed basis;
  - C. no other involvement in political campaigning/endorsements, or related conflict of interest;
  - D. no financial interest in the work undertaken by the City;
  - E. an independent person who personifies high ethical standards;
  - F. experience managing sensitive inquiries, conducting investigations and making appropriate recommendations;
  - G. excellent communications skills;
  - H. familiarity with investigatory procedures and the applicable legal principles, particularly as they relate to evidence, legal interpretation and natural justice;
  - I. general knowledge and appreciation of municipal government;
  - J. ability to interpret and apply the provisions of various statutes, regulations, policies and other enabling frameworks;
  - K. impartiality, wisdom, sound judgment combined with the ability to inspire trust and confidence; and
  - L. at least ten years of senior-level management, legal or quasi-judicial experience.
- (ii) Appointment to be for a four-year term, to be staggered two years between Council terms to ensure continuity; and
- (iii) Fees to be paid to the Integrity Commissioner, under an independent contract; and,
- e) the Managing Director, Corporate Services & City Treasurer, Chief Financial Officer **BE DIRECTED** to provide a source of financing for the establishment of an Integrity Commissioner; and,
- f) the City Clerk, in consultation with the City Solicitor, **BE DIRECTED** to report back in one year, after the implementation of the Integrity Commissioner, to evaluate the need for the establishment of a Lobbyist Registry.

#### PREVIOUS REPORTS PERTINENT TO THIS MATTER

- Item #24 – Board of Control – December 9, 2009
- Item #21 – Finance and Administration Committee – November 10, 2010
- Item #12 - Finance and Administration Committee – November 14, 2011
- Item #9 – Finance and Administration Committee – January 19, 2011
- Item #9 – Finance and Administration Services Committee – November 26, 2012

#### BACKGROUND

At the December 11, 2012 meeting of Municipal Council, the following resolution was passed with respect to updating the Code of Conduct and establishment of a lobbyist registry:

“That, on the recommendation of the City Clerk, the staff report dated November 26, 2012 providing an update on the review of the Code of Conduct for Members of Municipal Council and a lobbyist registry, as well as the attached communication dated November 26, 2012, from Councillor J.B. Swan, BE RECEIVED for information.”

At the September 18, 2012 meeting of Municipal Council, the following resolution was passed with respect to updating the Code of Conduct and establishment of a lobbyist registry:

“That the following actions be taken with respect to updating the Council Code of Conduct, providing for voluntary written disclosure of conflicts of interest by Council Members, and establishing a lobbyist register:

### Code of Conduct for Council Members

- a) the City Clerk, in conjunction with the City Solicitor, BE REQUESTED to report back to the Finance and Administrative Services Committee, by November 2012, with any changes that may be in order to the City's existing Code of Conduct for Council Members, that is reflective of best practices within the Province of Ontario; and;

### Lobbyist Registry

- b) the City Clerk, in conjunction with the City Solicitor, BE REQUESTED to report back to the Finance and Administrative Services Committee with a proposed policy and process to implement a lobbyist registry, including details as to any staff and/or financial resources that may be required to support this initiative;

it being noted that the Finance and Administrative Services Committee received a Municipal Council resolution from its meeting held on July 24 and 25, 2012 with respect to the Council Members voluntarily disclosing conflicts of interest and two communications dated August 12, 2012, from Councillor J.L. Baechler, with respect to the above-noted matters.”

The appointment of an Integrity Commissioner was raised at the September 18, 2012 Council Meeting. A motion requesting that the City Clerk, in conjunction with the City Solicitor, report back to the Finance and Administrative Services Committee with a proposed implementation plan for establishing an Integrity Commissioner was defeated. However, at the same meeting Municipal Council directed the City Clerk, in conjunction with the City Solicitor, to report back by November 2012 with any changes that may be in order to the City's existing Code of Conduct for Council Member, that is reflective of best practices within the Province of Ontario. This direction also asked that a report be submitted containing a proposed policy and process to implement a lobbyist registry.

In November 2012, the Civic Administration submitted a report providing an update with respect to the review of the Code of Conduct indicating that a draft report had been prepared but was under review and that a report would be submitted in 2013.

At the March 26, 2013 meeting of Municipal Council, the City Clerk was requested to defer bringing forward the report on the Code of Conduct until the Corporate Services Committee meeting on April 23, 2013, so that all Committee Members can be present to discuss the matter.

### **What are the legislative provisions that pertain to Accountability and Transparency?**

In 2007, the *Municipal Act, 2001* was amended to include several provisions to assist municipalities in being more transparent and accountable to the public. Many of these amendments arose from the report by Madam Justice Bellamy issued in 2005 on the Toronto Computer Leasing Inquiry and the Toronto External Contract Inquiry.

Section 270 of the *Municipal Act, 2001* requires every municipality to adopt and maintain policies for the sale and disposition of land; hiring of employees, procurement of goods and services, public notice, and transparency and accountability. The City of London's section 270 polices are contained in By-law A.-651-17 found at the following link:

[http://www.london.ca/By-laws/PDFs/section\\_270.pdf](http://www.london.ca/By-laws/PDFs/section_270.pdf)

Section 239.1 of the *Municipal Act, 2001* requires a municipality to appoint a closed meeting investigator to investigate complaints as to whether a municipality has complied with the requirements of section 239 (discretionary exceptions to the open meeting requirements) and its section 238 procedure by-law in respect of a meeting or part of a meeting that is closed to the public. Where a municipality does not appoint a closed meeting investigator, the Act provides that the Ombudsman of Ontario shall act as the closed meeting investigator. The City Clerk reported to the Council on November 14, 2007 regarding the appointment of a closed meeting investigator and recommended that the City appoint the Local Authority Service Ltd. as the City's closed meeting investigator:

<http://council.london.ca/meetings/Archives/Agendas/Board%20Of%20Control%20Agendas/Board%20of%20Control%20Agendas%202007/2007-11-14%20Agenda/Item%2014.pdf>

<http://council.london.ca/meetings/Archives/Agendas/Board%20Of%20Control%20Agendas/Board%20of%20Control%20Agendas%202007/2007-11-28%20Agenda/Item%209.pdf>

At its meeting of December 3, 2007 Municipal Council confirmed the selection of the Ombudsman of Ontario as the City's closed meeting investigator:

<http://council.london.ca/meetings/Archives/Reports%20and%20Minutes/Council%20Minutes/Council%20Minutes%202008/2007-12-03%20Minutes/Council%20Minutes.pdf>

Part V.1 of the *Municipal Act, 2001* authorizes a municipality to appoint four types of integrity officers. The power to appoint any of these officers is discretionary:

1. Integrity Commissioner
2. Ombudsman
3. Auditor General
4. Lobbyist Registrar

### **What is the authority for Council to adopt a Code of Conduct for Council Members?**

Section 223.2 of the *Municipal Act, 2001* authorizes a municipality to establish a Code of Conduct for members of council and the local boards of the municipality. A Code of Conduct cannot provide that a member, who contravenes the code, is guilty of an offence.

Section 223.3 authorizes a municipality to appoint an Integrity Commissioner who reports to Council and who is responsible for performing, in an independent manner, the functions assigned by the municipality with respect to the application of the Code of Conduct for members of council and the application of any procedures, rules and policies of the municipality governing the ethical behaviour of members of council. The appointment of an Integrity Commissioner is discretionary.

### **Does the City have a Code of Conduct for Council Members?**

The City of London's Council Code of Conduct for Members of Municipal Council was adopted by Municipal Council on December 1, 2003 and has remained unchanged since that time. The Code of Conduct can be found at the following link:

[http://www.london.ca/City\\_Council/Chapter05.htm#Code\\_of\\_Conduct\\_for\\_Members\\_of\\_Municipal\\_Council](http://www.london.ca/City_Council/Chapter05.htm#Code_of_Conduct_for_Members_of_Municipal_Council)

The City Solicitor provided the two attached (Appendix "A") reports to Municipal Council on the Code of Conduct, dated November 19, 2003 and November 10, 2004, respectively. No action was taken with respect to either of these reports.

### **What consideration has Council given to the appointment of an Integrity Commissioner?**

In 2007, the City Clerk submitted a report providing an overview of the optional officers under Part V.1 of the *Municipal Act, 2001*, as well as an additional information report with respect to an Integrity Commissioner.

The Municipal Council, at its meeting held on November 19, 2007, requested "*the Civic Administration to report back with additional information detailing the steps that would need to be taken to appoint an Integrity Commissioner, including clear parameters and a definition of roles; a review of the Code of Conduct; and, information pertaining to the learnings of other municipalities*".

On December 10, 2008 the City Clerk submitted a second report setting out the parameters for appointing an Integrity Commissioner. In that report, the City Clerk also spoke to the need to review the current Council Code of Conduct to include an Integrity Commissioner should Council wish to impose penalties on a Council Member where a Member has contravened the Code of Conduct. It was recommended that should Council wish to appoint an Integrity Commissioner, that the Integrity Commissioner be requested to review the Code of Conduct and recommend any necessary changes to the Code.

Municipal Council, at its meeting of January 19, 2009, approved the establishment of the Accountability and Transparency Task Force (ATTF), composed of three members of Council and two members of the public, to report back by no later than December 2009, with an implementation plan for appointing an Integrity Commissioner.

The ATTF studied the role of an Integrity Commissioner, as provided for in section 223.3(1) of the *Municipal Act, 2001* and made recommendations to the Municipal Council regarding the establishment of an Integrity Commissioner. The following is a summary of findings of the ATTF that were reported to Council on December 14, 2009:

### Duties of the Integrity Commissioner

- be appointed by Council by by-law
- function independently from the Civic Administration report directly to Council
- review the Code of Conduct for Members of Municipal Council and to make recommendations as necessary
- serve as a multi-faceted role to act not only as a complaint investigator, but also as an advisor to individual Members of Council in relation to the Municipal Code of Conduct and act as a proactive educator for the Municipal Council, the Civic Administration and the Public

### Operational Model

- complaints direct to the Integrity Commissioner
- if report indicates the Member is in contravention of the Code of Conduct, the Municipal Council may impose a reprimand or suspension of remuneration paid to the Member in respect to his or her services as a Member of Council for a period up to 90 days
- Integrity Commissioner to be responsible for their own insurance
- Integrity Commissioner to be responsible for their own staff

Municipal Council referred the above-noted recommendation of the ATTF to the 2010 Budget process for consideration. The 2010 Budget included \$25,000 to establish an implementation plan for the appointment of an Integrity Commissioner, subject to a report back from the Civic Administration as to how such a program might function. This matter was subsequently delayed when at its meeting of November 21, 2011 Municipal Council indicated a desire to have discussions related to any potential amendments to the Code of Conduct to be held in a facilitated session. Unfortunately, the selected facilitator became unavailable to carry out the sessions.

The appointment of an Integrity Commissioner was raised at the September 18, 2012 Council Meeting. A motion requesting that the City Clerk, in conjunction with the City Solicitor, report back to the Finance and Administrative Services Committee with a proposed implementation plan for establishing an Integrity Commissioner was defeated. However, at the same meeting Municipal Council directed the City Clerk, in conjunction with the City Solicitor, to report back by November 2012 with any changes that may be in order to the City's existing Code of Conduct for Council Member, that is reflective of best practices within the Province of Ontario. This direction also asked that a report be submitted containing a proposed policy and process to implement a lobbyist registry.

In November 2012, the Civic Administration submitted a report providing an update with respect to the review of the Code of Conduct indicating that a draft report had been prepared but was under review and that a report would be submitted in 2013.

At the March 26, 2013 meeting of Municipal Council, the City Clerk was requested to defer bringing forward the report on the Code of Conduct until the Corporate Services Committee meeting on April 23, 2013, so that all Committee Members can be present to discuss the matter.

### **What are the Best Practices for a Code of Conduct for Council Members?**

In examining best practices of other municipalities, the Civic Administration reviewed Council Codes of Conduct for the cities of Toronto, Mississauga, Ottawa, Hamilton and Kitchener. All of these codes appear to be modeled after the Toronto and Mississauga examples as it is noted they are strikingly similar.

The City of Mississauga's Code of Conduct may be considered as a best practice because it was reviewed extensively during the Mississauga Judicial Inquiry. Evidence presented at the Inquiry included a report prepared by Professor David Mullan, professor emeritus Queen's University and the City of Toronto's Integrity Commissioner from 2004-2008. In addition to the report, Professor Mullan provided expert testimony on ethics and conflicts of interest at the Inquiry, including testimony specific to the Mississauga Code. Justice Cunningham's report contains a review of the Mississauga Code and some recommendations with respect to it.

### **Does a Code of Conduct without an Integrity Commissioner Reflect Best Practices in Ontario?**

In terms of best practices in the province, the role of the Integrity Commissioner should be considered. Without an Integrity Commissioner there is no authority to conduct investigations for complaints made and impose penalties for contraventions under a Council Code of Conduct. It

could be suggested that without an Integrity Commissioner, a Code of Conduct serves a limited purpose to the extent that compliance with it is voluntary, except for matters that would fall under the *Criminal Code* or the *Ontario Human Rights Code*.

The cities of Toronto, Mississauga, Kitchener, Hamilton and Ottawa have appointed an Integrity Commissioner.

### **What types of penalties may be imposed for Code of Conduct contraventions where a Council has not appointed an Integrity Commissioner?**

The power of the Council to invoke a penalty for a Code of Conduct contravention is limited to circumstances where an Integrity Commissioner has reported a contravention of the Code.

In the absence of an Integrity Commissioner, there is no authority under the *Municipal Act, 2001* for the Council to impose a penalty for a Code of Conduct contravention. Penalties imposed by Council or anyone appointed by the Council, other than an Integrity Commissioner, would appear to be *ultra vires* and would most likely be struck down by a court.

Without an Integrity Commissioner, remedies for a contravention of the Code of Conduct are limited to what is in the City's current Code:

1. Complain to the police requesting investigations under the *Criminal Code*, in particular sections 122 (fraud or breach of trust) and 123 (member in connection with his or her duties of office accepts, offers or demands a loan, reward or advantages);
2. Advise the Member that the activity contravenes the Code;
3. Request or encourage the Member to stop the prohibited activity;
4. Participate in the Informal Resolution and/or Mediation Process under the Workplace Harassment/Discrimination Prevention Policy;
5. Complain to the *Ontario Human Rights Commission*; and,
6. Request Council to pass a resolution requesting a judicial investigation pursuant to section 274 of the *Municipal Act, 2001*;

### **What types of penalties may be imposed for Code of Conduct contraventions where a municipality has appointed an Integrity Commissioner?**

The *Municipal Act, 2001* authorizes a Municipal Council to impose a penalty, where an Integrity Commissioner reports to the Council that, in his or her opinion, the Member has contravened the Code of Conduct. Penalties are limited to a reprimand or a suspension of the remuneration paid to the Member, in respect to his or her services, as a Member of Council, for a period of up to 90 days.

Some municipalities have incorporated provisions into their Codes of Conduct for other types of penalties, including suspending or cancelling a Member's expense allocation, requiring a Member to issue an apology, return a gift, or refund the value of a gift or benefit received. Such penalties could be successfully challenged on the basis that there appears to be no authority in the *Municipal Act, 2001* to impose penalties other than a reprimand or a suspension of pay.

### **What authority does a Municipal Council have to conduct an inquiry into alleged Code of Conduct contraventions where the municipality has not appointed an Integrity Commissioner?**

In the absence of an Integrity Commissioner, the ability to conduct inquiries in respect of complaints is also limited.

Under the *Municipal Act, 2001*, an Integrity Commissioner is bestowed with special investigative powers which include powers under the *Public Inquiries Act* including the power to require by summons any person to attend and give evidence under oath or affirmation and to produce such documents or things as the Integrity Commissioner may specify.

While a municipality could appoint an individual, other than an Integrity Commissioner, to conduct an inquiry into a complaint, a municipality does not have the authority to grant to that individual any special powers to conduct an inquiry, including the power to compel persons to attend the inquiry and other powers under the *Public Inquiries Act*, thereby rendering participation by Council Members in the inquiry process to being strictly voluntary.

### **Should a Code of Conduct for Council Members include Explanatory Notes, Commentary and Examples?**

In examining best practices, the use of explanatory text and commentary in a Code of Conduct for Council Members was considered.

The Mississauga Code employs the use of extensive commentary to explain and elaborate on the rules. This is similar to the Law Society of Upper Canada's Rules of Professional Conduct.

The use of explanatory notes and commentary was reviewed by Dean Sossin at the Mississauga Inquiry, who noted that a more effective method is through publications, in the form of reports on complaints received, advice given that has been anonymized and guidelines issued by the Integrity Commissioner. Such mechanisms have the benefit of being a "living document", rather than being entrenched in a Code that would have to be amended as its application evolves. In some municipalities, the Integrity Commissioner is authorized to perform an education and advisory role from which guidelines and explanatory notes are often developed.

The draft Code that includes an Integrity Commissioner contains a provision (s.1.5) which provides that advice given by the Commissioner to a Member, binds the Commissioner in any subsequent consideration of the conduct of a Member, provided that all of the relevant facts known were disclosed.

### **How might the City of London's Code of Conduct for Council Members be amended to reflect best practices in Ontario?**

Two draft Codes of Conduct are attached to this report for consideration, one making provisions for the appointment of an Integrity Commissioner (Appendix "B") and a second without an Integrity Commissioner (Appendix "C"). These drafts are consistent with the Codes of Conduct for the City of Toronto and the City of Mississauga.

In order to respond to Municipal Council's direction that the Civic Administration report back with any changes that may be in order to the Council Code of Conduct "that is reflective of best practices within the Province of Ontario", it was necessary to raise the discussion with respect to the establishment of an Integrity Commissioner.

The draft Codes of Conduct attached to this report reflect an augmentation of the City of London's existing Code of Conduct for Members of Municipal Council through the inclusion of certain provisions from the Mississauga and Toronto Codes. They also incorporate some of the recommendations made by Professor Mullan at the Mississauga Inquiry that were endorsed by Justice Cunningham in his report.

The draft Codes of Conduct include the following:

- a statement of key principles (Rule 1);
- a framework for the application of the Code;
- the relationship to the *Municipal Conflict of Interest Act* and the role of the Integrity Commissioner;
- a series of general rules, including stand alone provisions for application of the Code as recommended in the Cunningham report (Rule 2);
- expanded rules on gifts and benefits, with the most significant change being the requirement to complete a disclosure statement for gifts over a certain monetary limit, which is consistent with the Toronto and Mississauga Codes (Rule 3);
- an added provision (Rule 6) regarding conduct at Council meetings or while representing the Council or the Corporation, consistent with the Toronto and Mississauga Codes;
- an added provision (Rule 7) regarding conduct respecting staff, which reflects the Council/Civic Administration relationship and more clearly defines the role of the Civic Administration and Members of Council;
- an expansion on the existing Code (Rules 8 and 10), requiring compliance with the Corporation's Workplace Harassment and Discrimination Prevention Policy and the Workplace Violence Prevention Policy, including the identification of a process for the handling of complaints; and
- A definition for "apparent conflict of interest", which is consistent with the recommendation of Professor Mullan, as adopted by Justice Cunningham in the Mississauga Report.

### **What is the legislative authority to establish a Lobbyist Registry and Registrar?**

Sections 223.9 and 223.11 of the *Municipal Act, 2001* authorize a municipality to establish and maintain a registry to keep returns filed by persons who lobby public office holders and to appoint a registrar who is responsible for performing in an independent manner the functions assigned by the municipality with respect to its lobbyist registry.

### **What other municipalities have a Lobbyist Registry or Registrar?**

The City of Toronto By-law establishing the Lobbyist registry is found at the following link:

[http://www.toronto.ca/legdocs/municode/1184\\_140.pdf](http://www.toronto.ca/legdocs/municode/1184_140.pdf)

The Toronto By-law provides for a registry to be overseen by a registrar. It uses terms similar to the provincial and federal systems. Lobbyists are required to register (by filing a return) prior to undertaking any lobbying activity. Registration requirements vary depending upon the class or category of lobbyist. The by-law includes a Lobbyists Code of Conduct. Enforcement is through the provincial courts.

The City of Ottawa recently enacted a Lobbyist Registry By-law:

[http://ottawa.ca/en/city\\_hall/councilcommittees/mayor\\_council/accountability/lobbyistregistry/bulletins/index.htm](http://ottawa.ca/en/city_hall/councilcommittees/mayor_council/accountability/lobbyistregistry/bulletins/index.htm)

The Ottawa By-law uses similar terminology and definitions as found in the provincial legislation and the City of Toronto By-law. There are some differences, including that the by-law does not require that not for profit corporations, with paid staff, register. As well, the Ottawa by-law does not require registration prior to lobbying. Instead, lobbyists are required to register within 15 days of a specific lobbying communication. Enforcement of the by-law rests with the City's Integrity Commissioner who is cross appointed to act as Lobbyist Registrar. The by-law authorizes the Integrity Commissioner to investigate complaints and to impose sanctions on persons who do not comply with the by-law including the imposition of temporary bans on lobbying and the suspension or revocation of a lobbyist's registration. The By-law also includes a Lobbyist Code of Conduct.

The enforcement of the Ottawa by-law appears to be limited in its application. Ottawa is considering amending its codes of conduct for council members and employees to include a provision that prohibits communications with a banned or unregistered lobbyist where such person is undertaking a lobbying activity as defined in the by-law. Some consideration would have to be given to the practical aspects of enforcing such a mechanism noting that employees and council members would be under an obligation to conduct a search of the registry before communicating with the lobbyist to ensure compliance with the applicable code.

### **What are the best practices for a municipal Lobbyist Registry and Lobbyist Registrar?**

Lobbyist Registries and Registrars were discussed extensively at the Toronto and Mississauga Inquires and both reports contain recommendations regarding them. Justice Bellamy recommended that the City of Toronto establish a lobbyist registry and appoint a registrar to oversee it. The Toronto system was reviewed extensively by experts who testified at the Mississauga Inquiry. These witnesses opined that the Toronto registry was too costly and complex.

Witnesses at the Mississauga Inquiry discussed different types of lobbyist registries including a voluntary registry system that only requires lobbyists to register what the nature of their business is and a disclosure system which would include more detailed information in terms of the lobby activities undertaken.

Also raised at the Inquiry were alternate models including a lobbyist code of conduct regulated through an accountability framework and overseen by an Integrity Commissioner similar to the provincial model. The Surrey B.C. model which uses guidelines in the city's code of conduct for council members and employees was raised at the Inquiry and in Justice Cunningham's Report as an example for regulating lobbying activity other than through a registry.

Justice Cunningham did not recommend that Mississauga establish a lobbyist registry. Instead, he recommended that the City amend its Code of Conduct for Council Members to incorporate guidelines for how council members should deal with lobbyists particularly in the context of development issues.

### **What options are available for Council when considering a Lobbyist Registry or Lobbyist Registrar?**

At this time, Civic Administration is recommending that the establishment of a Lobbyist Registry be revisited a year after the Integrity Commissioner has been in place to determine if a Lobbyist Registry is necessary. Much of the work undertaken by an Integrity Commissioner is to educate and provide advice to Members of Council. This education and advice may resolve some of the concerns raised by Members of Council with respect to the need to establish a Lobbyist Registry. As well, Civic Administration would be in a better position to comment on the experience with the



Ottawa model which has just been enacted.

If Council wishes to implement a system with respect to regulating lobbying activities, the following options could be considered:

1. Establish a lobbyist registry system that requires defined classes of lobbyists to register either before or after they undertake a lobbying activity with no enforcement provisions.
2. Establish a lobbyist registry system to be overseen by a Registrar that requires defined classes of lobbyists to register either before or after they undertake a lobbying activity with enforcement provisions which could include offences under the *Provincial Offences Act* (Toronto model) a ban system to be imposed by the Registrar (Ottawa model) or enforcement through the application of the Council Member and Employee Codes of Conduct (currently under review in Ottawa).
3. Amend the Code of Conduct for Council Members to include guidelines as to how elected officials may communicate with lobbyists.
4. Maintain the status quo and rely on the Employee Code of Conduct, the City's Procurement Policy, the Council Members Code of Conduct and the *Criminal Code*.
5. Cross appoint an individual to perform accountability and transparency duties for the City including holding the office of Closed Meeting Investigator, Integrity Commissioner and /or Lobbyist Registrar.

**What are the Financial Implications for Establishing an Integrity Commissioner, a Lobbyist Registry and Lobbyist Registrar?**

The following table summarizes costs provided by the municipalities reviewed with respect to the implementation of a Council Code of Conduct process undertaken by an Integrity Commissioner:

Municipality	Integrity Commissioner Duties	Cost
Ottawa	Council Code of Conduct Closed Meeting Investigator Lobbyist Registrar	\$25,000 per year and \$200 per day to a maximum of \$1,000 per day
Mississauga	Council Code of Conduct Closed Meeting Investigator	\$20,000 per year
Hamilton	Council Code of Conduct	\$50,000 per year
Kitchener	Council Code of Conduct	\$2,000 per year and \$150 per hour
Toronto	Council Code of Conduct	\$200,000 per year

In all of the above cases, the Integrity Commissioner reports directly to Council, with Civic Administration giving limited, if any, support to the Integrity Commissioner.

<b>PREPARED AND SUBMITTED BY:</b>	<b>PREPARED AND SUBMITTED BY:</b>
<b>CATHY SAUNDERS CITY CLERK</b>	<b>JENNIFER A. SMOUT SOLICITOR</b>

Attachments